

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge
April 27, 2006

CHIEF CLERKS OFFICE

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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Derek Seal
General Counsel
Texas Commission on Environmental Quality
PO Box 13087
Austin Texas 78711-3087

VIA HAND DELIVERY

**RE: SOAH Docket No. 582-05-8335; TCEQ Docket No. 2004-1315-PST-E;
Manuel Manriquez, dba M&A Oil Co.**

This is an underground storage tank enforcement action related to a convenience store in Presidio, Texas. The Executive Director (ED) is seeking an order requiring corrective action and assessing administrative penalties. The PFD recommends that the respondent, Mr. Manriquez, be ordered to carry out the corrective action specified by the ED – including payment of outstanding fees and associated penalties and interest – but that no administrative penalty be assessed.

The Proposal for Decision (PFD) and Proposed Order in this case were issued on March 21, 2006. Both parties filed exceptions, and the ED filed a reply to the respondent's exceptions.

The ED's exceptions. The ED excepts to the PFD's recommendation that no administrative penalty be assessed. After reviewing the ED's exceptions, I have concluded that the discussion and recommendations in the PFD on this issue require no change. The ED also recommends two minor modifications of the Proposed Order; I agree with those proposed modifications.

The respondent's exceptions. Mr. Manriquez asserts that the outstanding fees, penalties and interest that are required to be paid as part of the Proposed Order's corrective action accrued before, and were discharged in, his Chapter 13 bankruptcy proceeding. The ED replies that the fees at issue were invoiced after the confirmation of the debtor's plan and that there is no evidence they were allowed as a claim in the bankruptcy proceeding.

The respondent's exceptions (and the ED's reply) raise issues that were not explored at the hearing in this case. At the time of the hearing, the parties presented a lengthy set of stipulations¹ and agreed that there was only one contested issue in the case: the respondent's ability to pay the amount of the administrative penalty. The parties' stipulations included the following:

As documented during a record review investigation by a TCEQ Central Office investigator on August 20, 2004, Mr. Manriquez had not paid outstanding annual UST fees, including late penalties and interest, in violation of 30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702.

The corrective action ordering provision recommended by the Executive Director in Paragraph 13.c. of the EDPRP [payment of fees, penalties, and interest] is justified given the alleged violation of August 20, 2004, in this enforcement matter.

The violations alleged in the current enforcement action were documented after the conclusion of Mr. Manriquez's Chapter 13 bankruptcy proceeding in March, 2002, and thus the TCEQ is not barred from pursuing administrative penalties and corrective action in this enforcement action.

Failure to pay annual fees is one of the "violations alleged" in the ED's petition in this case, and the respondent has therefore stipulated that those violations were documented after the conclusion of the bankruptcy proceeding. Respondent has also stipulated to the appropriateness of the corrective action requiring him to pay the accrued fees and late penalties. Other than the stipulations, there is little evidence in the record about the details of the fees at issue of the bankruptcy proceeding. Given the parties' representations at hearing and their stipulations, the ALJ excluded as irrelevant all evidence offered by the respondent concerning the bankruptcy.² Ed Moderow, an enforcement coordinator testifying for the ED, stated that the outstanding fees amount to a sum of about \$800.

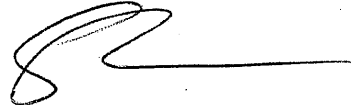
On the basis of this record, including the parties' stipulations, respondent should be required to perform all the recommended corrective actions, including paying accrued fees and associated penalties and interest.

¹ See Attachment A.

² It was not clear for what purpose the bankruptcy materials were being offered.

Conclusion. The ALJ makes no changes to the PFD or Proposed Order, except to recommend incorporation of the two minor modifications proposed by the ED. The PFD is ready for review by the Texas Commission on Environmental Quality.

Sincerely,



Shannon Kilgore
Administrative Law Judge

SK/ds

xc: Docket Clerk, State Office of Administrative Hearings - **VIA HAND DELIVERY**
Justin Lannen, Staff Attorney, Texas Commission on Environmental Quality, 2309 Gravel Drive, Fort Worth, Texas 76118 - **VIA REGULAR MAIL**
Blas Coy, Jr. Texas Commission on Environmental Quality, Office of the Public Interest Council, PO Box 13087, Austin, TX 78711-3087- **VIA HAND DELIVERY**
Rex H. White, Jr., Attorney, 812 W. 11th Street, Ste 203, Austin, TX 78701 - **VIA REGULAR MAIL**

The following information was obtained from the records of the Department of Health and Human Services, Office of the Assistant Secretary for Health, regarding the health status of the individual named [REDACTED] on 10/10/2010.

The individual named [REDACTED] was born on [REDACTED] and is currently residing at [REDACTED]. The individual has been diagnosed with [REDACTED] and is currently receiving treatment from [REDACTED]. The individual's health status is currently [REDACTED].

The individual named [REDACTED] has a history of [REDACTED] and has been diagnosed with [REDACTED]. The individual is currently receiving treatment from [REDACTED] and is currently [REDACTED]. The individual's health status is currently [REDACTED].